UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

APPELLANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT GRANTED;
RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT DENIED:
August 12, 2026

CBCA 8733, 8858

CTG FEDERAL LLC,

Appellant,

v.

DEPARTMENT OF JUSTICE,

Respondent.

Stephanie D. Wilson of Berenzweig Leonard, LLP, McLean, VA; and Jill McDowell and Scott Woehr of Impresa Legal Group, Arlington, VA, counsel for Appellant.

William G. Hughes, Sarah G. Fishel, and James E. Hicks, Office of Chief Counsel, Drug Enforcement Administration, Department of Justice, Springfield, VA, counsel for Respondent.

Before Board Judges **LESTER**, **RUSSELL**, and **SULLIVAN**.

SULLIVAN, Board Judge.

CTG Federal LLC (CTG) submitted two claims to the contracting officer, following the Drug Enforcement Agency's (DEA) decision not to exercise the first of two purported option years on the contract. CTG appealed the denials of its claims to the Board. Following discovery, the parties filed cross-motions for partial summary judgment on the threshold question of whether and the extent to which CTG's quote was incorporated into the contract between the parties. Because we find that it was incorporated in its entirety, we grant CTG's motion and deny DEA's motion.

Background

DEA has long utilized data protection software in an effort to provide backup protection for DEA information technology platforms. Appellant's Statement of Undisputed Material Facts ¶ 1. One of the pieces of software upon which DEA relied was Commvault's enterprise data protection solution. *Id.* In January 2024, DEA contacted Commvault to obtain pricing for renewal options. Appeal File, Exhibit 1.[1] A Commvault representative told DEA personnel that Commvault would provide better annual prices in exchange for an agreement to purchase software over more than one year. *Id*. The Commvault representative put DEA in touch with one of its reseller partners, CTG, and said that CTG would provide pricing. Exhibit 2 at 5.

In March 2024, CTG submitted a quote of $5,470,800, or $1,823,600 annually for a base year and two option years, for the Commvault software. Exhibit 25 at 4, 7. CTG's quote stated in two places that its quote was to be incorporated into the Government's order to CTG. Exhibit 26(b) at 7. The quote also contained terms that required DEA to use its best efforts to obtain funds for the option years and an agreement that DEA would not obtain functionally similar software for a period of one year following the early termination of the agreement. *Id*.

Following this submission, DEA asked for a price for a single year because "[o]ur backup and storage approaches are in flux and we'll need different numbers for sure a year from now." Exhibit 2 at 3-4. CTG provided a one-year quote in the amount of $3,435,100. Exhibit 26(b) at 6. The one-year quote did not include the language about the need to incorporate the quote into the order or the terms requiring the DEA to use its best efforts to obtain funding for the option years and an agreement that DEA would not obtain functionally similar software for a period of one year following the early termination of the agreement. *Id*. The CTG representative explained that "[s]ince Commvault has no discount flexibility over the 1-year renewals, the price for that option is much higher. If you can do the base + option renewal, that's certainly the way I would recommend you folks go." Exhibit 26(a) at 1.

---

[1] All exhibits are in the appeal file, unless otherwise noted.

In June 2024, DEA issued a request for quotes (RFQ) as a set-aside for HUBZone small business. Exhibit 4 at 1. DEA re-issued the RFQ as a set-aside for small business.[2] Exhibit 5 at 1. The RFQ described the software and services to be provided with the quantities required and requested unit prices and totals for five contract line items (CLINs). *Id*. at 3. In addition to the RFQ, DEA provided a pricing sheet, labeled "DEA Consolidated Commvault Renewal, [period of performance (POP)] 6/24/24 - 6/23/25, 1 Base Year + 2 Option Years." Exhibits 27, 28 at 2.

In response to the second RFQ, CTG quoted a total price of $5,470,800, with $1,823,600 "due upon award," $1,823,600 due on June 24, 2025, for option year 1, and $1,823,600 due on June 24, 2026, for option year 2. Exhibit 11 at 1-2.[3] This pricing appears to be the same pricing provided to DEA in March 2024. *Compare* Exhibit 11 at 1-2 *with* Exhibit 25 at 7.

CTG's quote stated in two places that its quote was to be incorporated into the Government's offer: "The following sentence is required on the Order from the Government issued to CTG Federal, LLC: 'CTG Federal, LLC quote number RC24022914JD dated 06/17/2024 is hereby incorporated and attached hereto.'" Exhibit 11 at 2, 3.[4] The quote also contained terms that required DEA to use its best efforts to obtain funds for the option years and an agreement that DEA would not obtain functionally similar software for a period of one year following the early termination of the agreement:

> Enterprise License Agreement (ELA) Payment Schedule Terms and Conditions
>
> This is a Base Year and Two (2) – One (1) Year Option Periods Payment Schedule and the Government agrees to use best efforts to obtain funds to make the payments on the due dates stated herein. Incorporate FAR 52.232-23 - Assignment of Claims[.] It is the intent of the Government by placing this Order to exercise each renewal option and to extend the Payment Schedule

---

[2] DEA, in its proposed findings, only says that the RFQ was re-issued. Respondent's Statement of Undisputed Material Facts ¶ 2. DEA does not explain why the offers received in response to the first RFQ did not meet DEA's requirements.

[3] CTG qualified as a small business but not as a HUBZone small business. Appellant's Statement of Undisputed Material Facts ¶ 13.

[4] Although the quoted language identifies June 17, 2024, as the date of CTG's quote, the date of the actual quote in the record is June 24, 2024. Exhibit 11 at 2.

> until completion of the full Payment Schedule Term so long as the bona fide needs of the Government for the products or functionally similar products continues to exist and funds are available. If (i) an Order expires prior to the expiration of the relevant full Payment Schedule Term and the Government does not exercise any option to renew the Order, or (ii) the Government terminates the Order pursuant to a Termination for Convenience, the Government agrees not to replace the equipment and/or software under this Order with functionally similar equipment and/or software for a period of one (1) year succeeding such expiration or termination.
>
> The software acquired under this Order is priced and provided as a single asset fully delivered upon acceptance, and therefore, the rights to terminate the Order shall apply to the entire Order and not allow partial terminations of individual items of software.

Exhibit 11 at 2-3 (emphasis omitted). This language is the same as the language set forth in the quote provided to DEA in March 2024. *Compare* Exhibit 11 *with* Exhibit 25 at 7.

DEA issued an order to CTG on June 24, 2024. Exhibit 9 at 1. The order specified that the method of solicitation was an RFQ. *Id*. The copy of the order in the record is signed only by the contracting officer and not by a representative of CTG. *Id*.[5] The order amount, set forth in Box 26, titled "TOTAL AWARD AMOUNT," was $1,823,600. *Id*. at 1-2. The order listed five CLINs that described the software or service and the quantities to be provided, the unit price, and the total price. *Id*. at 2. The CLINs matched the information provided on CTG's quote for the base year. *Compare id*. *with* Exhibit 11 at 1. The order did not include CLINs for services beyond the base year. Exhibit 9 at 1-2.[6]

In Box 20 of the order, DEA noted that CTG's quote was incorporated by reference:

> CTG Federal's quote #RC24022914JD, dated 24 June 2024, in the amount of $1,823,600.00 is hereby incorporated by reference. Quote covers funding for 1-year subscription. Firm Fixed Price.

---

[5] In the appeal file, DEA named the document the "awarded order." Exhibit 9.

[6] On the same day the order was executed, the contracting officer entered the contract into the federal procurement data system, noting that the agreement was for a "Base Year + Two Option Years" of Commvault service but that "DEA d[id] not intend to exercise the option years at th[at] quantity." Exhibit 35 at 2.

Exhibit 9 at 1. The order incorporated the Terms and Conditions for Commercial Items, Federal Acquisition Regulations (FAR) 52.212-4 (48 CFR 52.212-4 (2023)), the Option to Extend the Term of the Contract, FAR 52.217-9, and the Option to Extend Services, FAR 52-217-8, which permitted the Government to "require continued performance of any services within the limits and at the rates specified in the contract." Exhibit 9 at 1, 6.

CTG alleged in its complaint in CBCA 8733 that it "performed during the base period," Complaint ¶ 40, and DEA answered that CTG performed during the base period and DEA does not dispute this performance. Answer at 4. In July 2024, CTG paid the invoice for the three-year Commvault license. Exhibit 29 at 1, 3. The order expired in June 2025. Exhibit 9 at 2. DEA did not exercise the first option year or pay the amounts listed for option years one and two. *See* Exhibit 21 at 1-2.

CTG submitted a claim in August 2025, asserting that DEA had breached the contract and the expiration constituted a constructive termination for convenience. Exhibit 20 at 5-9. CTG sought to recover $3,647,200. *Id*. at 1. The contracting officer issued a final decision in September 2025, Exhibit 21, and CTG filed a timely appeal, which was docketed as CBCA 8733.

In December 2025, CTG submitted a second claim, asserting that DEA had acted in bad faith, made material misrepresentations, had violated the superior knowledge doctrine, and had ratified the terms of CTG's proposal through DEA's actions. Exhibit 43 at 4-12. Again, CTG sought to recover $3,647,200. *Id.* at 12. The contracting officer did not issue a decision on the second claim, and CTG filed its appeal as a deemed denial. The second appeal was docketed as CBCA 8858 and consolidated with the first appeal.

Discussion

I. Parties Entered Into a Contract

Before we reach the issue of whether CTG's quote was incorporated by reference, we must consider whether the parties entered into a contract. Pursuant to regulation, for an offer solicited by RFQ, the Government extends the offer and a contract is formed when the contractor accepts:

> A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy

> certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

FAR 13.004(a). If the supplier does not sign the offer, the contract is formed when the supplier furnishes the supplies ordered:

> When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

Id. 13.004(b); *see Navigant SatoTravel v. General Services Administration*, CBCA 449, 09-1 BCA ¶ 34,098, at 168,603.

The offer for the contract was issued by the agency on June 24, 2024. It does not appear that CTG signed the contract. In its answer, DEA did not deny that CTG performed the first year of the contract. Fed. R. Civ. P. 8(b)(6); *see K.O.O. Construction, Inc. v. Department of Veterans Affairs*, CBCA 6072, 18-1 BCA ¶ 37,032, at 180,310. We find that CTG accepted DEA's order through performance of the first year of the contract.

II. CTG's Quote Was Incorporated By Reference

The parties ask the Board to determine whether CTG's quote was incorporated by reference and the scope of that incorporation. Whether and to what extent CTG's quote was incorporated into the contract is a question of law. *Cook Biotech, Inc. v. Acell, Inc.*, 460 F.3d 1365, 1376 (Fed. Cir. 2006). The Court of Appeals for the Federal Circuit has explained how to determine whether extrinsic material has been incorporated into a contract:

> [T]he language used in a contract to incorporate extrinsic material by reference must explicitly, or at least precisely, identify the written material being incorporated and must clearly communicate that the purpose of the reference is to incorporate the referenced material into the contract (rather than merely to acknowledge that the referenced material is relevant to the contract, e.g. as background law or negotiating history).

Northrop Grumman Information Technology, Inc. v. United States, 535 F.3d 1339, 1345 (Fed. Cir. 2008). To find that a document is incorporated by reference, the incorporating language must be "express and clear, so as to leave no ambiguity about the identity of the document being referenced, nor any reasonable doubt about the fact that the referenced document is being incorporated into the contract." *Id*. at 1344 (emphasis omitted). This standard is met by parties using the "widely-used and judicially-approved language of incorporation, such as 'is hereby incorporated by reference' . . . and by including specific and sufficient information identifying a particular document, such as the title, date, parties to, and section headings of any document to be incorporated." *Id*. at 1346. The language incorporating CTG's quote meets these standards. The order references the number and date of CTG's quotation and states that it is "hereby incorporated by reference."

The crux of the parties' dispute is over the purpose of incorporating CTG's quote. DEA asserts that, because the order does not refer to all of the terms and conditions of CTG's quote, it cannot be read to have incorporated them by reference. Respondent's Response to Appellant's Partial Motion for Summary Judgment at 2-3. DEA is correct that the order does not describe the reason for incorporation, but, to find the purpose of the incorporation, we can look to the incorporated document itself. In *CSI Aviation, Inc. v. Department of Homeland Security*, 31 F.4th 1349, 1355 (Fed. Cir. 2022), the Federal Circuit found that the scheduled contract incorporated the contractor's offer and that the offer stated that the contractor's terms and conditions would apply to all operations. Based upon this language, the Court held that the contractor's terms and conditions were incorporated by reference. Similarly, in *Corning Construction Corp. v. Department of Treasury*, GSBCA 16127-TD, 03-2 BCA ¶ 32,402, one of our predecessor boards found that the subcontractor's proposal was incorporated into the contractor's proposal because the contractor's proposal used the subcontractor's qualifying language in its proposal. *Id*. at 160,352. This qualifying language became part of the contract modification issued by the contracting officer when the contracting officer incorporated the contractor's proposal into the modification. *Id*. Here, CTG put DEA on notice that DEA's offer to CTG had to incorporate the quote in its entirety. DEA chose to incorporate the quote in its offer to CTG, and the terms of CTG's quote became part of the contract.

DEA argues that the order did not incorporate CTG's "proposal in full" and that the incorporation is limited to the "discrete element of the quote, in the amount of $1,823,600." Respondent's Response to Appellant's Partial Motion for Summary Judgment at 1-2. As noted above, CTG's quote was not an offer for DEA to review and decide which portions to accept. FAR 13.004(a); *see Beacon Point Associates LLC v. Department of Veterans Affairs*, CBCA 7622, 23-1 BCA ¶ 38,396, at 186,576, *aff'd*, 139 F.4h 1306 (Fed. Cir. 2025). Instead, DEA issued the offer to CTG and set forth in that offer the total price for the first year and the five CLINs, describing what would be provided with the quantities and identifying unit prices and total prices for each CLIN. If the contract is properly interpreted as limited to a single year without any obligations past the base year, DEA did not need to reference CTG's quote for any of these elements in its offer. "An interpretation that gives meaning to all parts of the contract is to be preferred over one that leaves a portion of the contract useless, inexplicable, void, or superfluous." *VSS International v. Department of Transportation*, CBCA 8353, 26-1 BCA ¶ 39,010, at 189,980 (citing *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991)). To find that DEA's incorporation of CTG's quote was for the limited purpose of restating the price would render the incorporation superfluous. Similarly, DEA asserts that the language "[q]uote covers funding for 1 year subscription" confirms the "limited nature of the incorporation by DEA." Respondent's Response to Appellant's Partial Motion for Summary Judgment at 2. While it is not clear what this language is intended to convey because a quote cannot provide funding and, as noted, the quote was not an offer for DEA to accept, it was not necessary to limit the contract to one year in this manner. DEA was the master of the offer, and, if it had wanted to limit the term of the contract to one year, it did not need to incorporate CTG's quote into its offer. Therefore, the incorporation of CTG's quote has to serve another purpose, which was to incorporate the terms of CTG's quote not found on the face of DEA's offer.

DEA also argues that the terms regarding DEA using its best efforts to obtain funding cannot be read into the contract because those terms conflict with DEA's exclusive right to exercise the options. Respondent's Response to Appellant's Partial Motion for Summary Judgment at 4. While the Government's right to exercise options on a contract is within its sole discretion, there are circumstances where the Government has negotiated conditions or limits upon that discretion. *See Merlin International, Inc. v. Department of Homeland Security*, CBCA 1012, et al., 11-2 BCA ¶ 34,869, at 171,571 (dispute involving terms similar to the terms included in CTG's quote). We do not read the terms of the quote to be in conflict with DEA's right to decide to exercise the options under the contract. Rather, the terms added conditions for the exercise or non-exercise of the options. Whether DEA's decision not to exercise the option under the contract triggered the provisions of those terms is beyond the scope of the parties' briefs. We only hold that the terms from CTG's quote incorporated by reference do not conflict with other provisions of the contract.

Decision

CTG's motion for partial summary judgment is **GRANTED**, and DEA's motion is **DENIED**. The Board will issue a separate order for further proceedings.

Marian E. Sullivan
MARIAN E. SULLIVAN
Board Judge

We concur:

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge